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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,390	02/05/2001	Carl Hewitt	3COM-T3393	8391

7590 12/13/2004  
WAGNER MURABITO & HAO LLP  
TWO NORTH MARKET STREET  
THIRD FLOOR  
SAN JOSE, CA 95113

EXAMINER

NGUYEN, DUC M

ART UNIT	PAPER NUMBER
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2685

DATE MAILED: 12/13/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. .

09/777,390

Applicant(s)

HEWITT ET AL.

Examiner

Duc M. Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22, 24-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

This action is in response to applicant's response filed on 9/3/04. Claims 1-22, 24-25 are now pending in the present application. **This action is made final.**

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims **1-11, 16-21** are rejected under 35 U.S.C. 103(a) as unpatentable over **Mackintosh et al** (US Patent Number **6,317,784**).

Regarding claim **1**, **Mackintosh** discloses a method for retrieving supplemental materials about programs playing at a broadcast radio station (see Figs. 5-6 and col. 8, line 33 - col. 11, line 31), which would include all the claimed limitations, wherein it is clear that in order to "retrieve" the supplemental materials, the requested information comprising ID codes would be transmitted by the user terminal.

As to the limitation of "user-generated request", it is noted that **Mackintosh** further discloses that in another embodiment, the information is not retrieved by the user terminal until **a button is clicked** (see col. 13, lines 45-67, particularly **lines 62-67**), which explicitly implies that a "user-generated request" is activated when **a button is clicked**. Therefore, the claimed limitations are made obvious by **Mackintosh** for

retrieving the supplemental materials based upon the user-generated request as claimed, for reducing unnecessary loading of communication channels.

Regarding claim **2**, it is rejected for the same reason as set forth in claim **1** above. In addition, **Mackintosh** discloses the information is requested and retrieved via the Internet (see col. 10, lines 5-30).

Regarding claim **3**, it is rejected for the same reason as set forth in claim **1** above. In addition, **Mackintosh** discloses the identity of audio content consists of a unique radio appliance identifier (inherent feature to identify the request terminal) and an indicator used to identify the radio station (see col. 10, lines 18-23).

Regarding claim **4**, it is rejected for the same reason as set forth in claim **1** above. In addition, **Mackintosh** discloses the identity of audio content consists of a unique radio appliance identifier (inherent feature to identify the request terminal) and a digitized form of the audio content (see col. 9, lines 8-33).

Regarding claims **5-7**, they are rejected for the same reason as set forth in claim **1** above. In addition, **Mackintosh** discloses the requested information are details of a musical work, purchasing information and the title as claimed (see col. 9, lines 8-33 and col. 11, lines 1-8).

Regarding claims **8-11**, they are rejected for the same reason as set forth in claim **1** above. In addition, **Mackintosh** discloses the audio content and requested information are details of a commercial transaction, purchasing information and the product as claimed (see col. 11, lines 1-40 and col. 13, line 15 - col. 14, line 65).

Regarding claims **16-17**, they are rejected for the same reason as set forth in claim **1** above, wherein it is clear that **Mackintosh** would disclose a decoding process as claimed (inherent feature), in order to play the receiving audio content.

Regarding claims **18-21**, they are interpreted and rejected for the same reason as set forth in claims **5-11** above.

3. Claims **12-15, 22, 24-25** are rejected under 35 U.S.C. 103(a) as being unpatentable by **Mackintosh** in view of **Alexander et al** (US Patent Number **6,177,931**).

Regarding claims **12-15, 22, 24, Mackintosh** discloses all the claimed limitations, see claim **1** above, except for receiving user activities such as RF channel tuning or volume adjustment. However, since **Mackintosh** discloses the media player comprises features such as tuner button and volume button (see col. 12, lines 47-54), and since monitoring user activities such as channel tuning, channel switching and volume adjustment are well known in the art of program broadcasting as disclosed by **Alexander** (see col. 28, lines 30-52), it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the above teaching of **Alexander** to **Mackintosh** as well, for monitoring user activities such as channel tuning or volume adjustment as claimed, so that advertisements can be effectively target to certain users based on analysis of viewer's actions.

Regarding claim **25**, it is rejected for the same reason as set forth in claim **1** above. In addition, since **Mackintosh** discloses a personal computer (see col. 5, lines

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30-37), it would have been obvious that such PC would comprise a software codec in order to convert the receiving digital data into audio for broadcasting audio data to the user of the personal computer.

***Response to Arguments***

Applicant's arguments with respect to claims 1-22, 24-25 have been considered but are moot in view of the new ground(s) of rejection.

**4. Any response to this final action should be mailed to:**

Box A.F.

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 872-9314 (for formal communications intended for entry)

(for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington VA, Sixth Floor (Receptionist).

Any inquiry concerning this communication or communications from the examiner should be directed to Duc M. Nguyen whose telephone number is (703) 306-4531, Monday-Thursday. Or to Edward Urban (Supervisor) whose telephone number is (703) 305-4385.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-4700.

Duc M. Nguyen

Nov 9, 2003

